



**CITY OF SUNNYVALE  
REPORT  
Administrative Hearing**

**July 28, 2004**

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**SUBJECT:**           **2004-0481:** Application on a 6,360 square-foot site located at **767 Chopin Drive** in an R-0 (Low Density Residential) Zoning District. (APN: 211-26-027)

Motion               **Use Permit** to allow a front yard fence exceeding seven feet in height, side and rear yard fences exceeding seven feet and to allow an accessory structure in the front yard area.

**REPORT IN BRIEF**

**Existing Site**           Two story, single-family residence

**Conditions**

**Surrounding Land Uses**

North               Highway Business – Falore Auto Dealership site

South               Single Family Residential

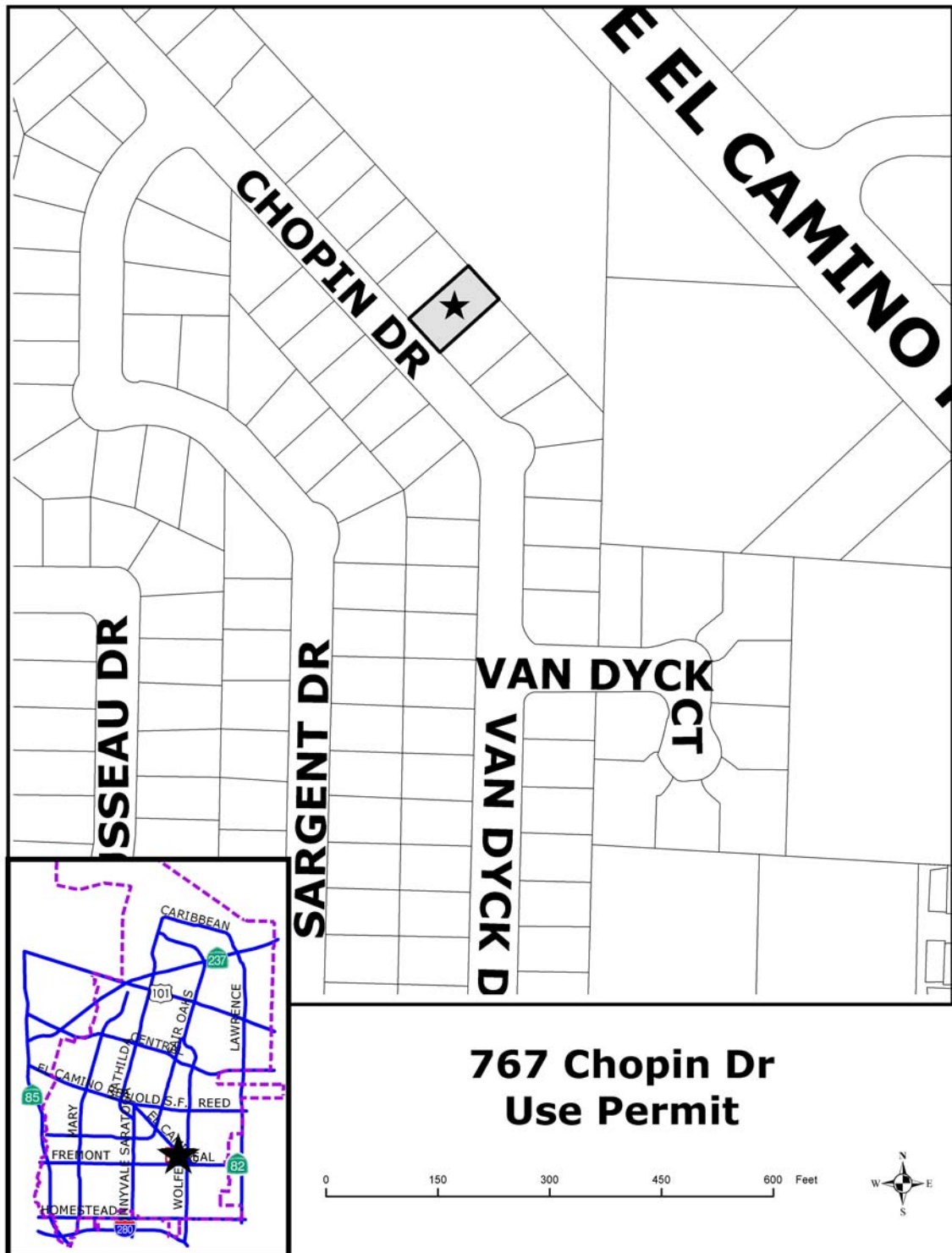
East                Single Family Residential

West               Single Family Residential

**Issues**               Neighborhood Compatibility

**Environmental Status**       A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

**Staff Recommendation**       Approval with Conditions



**PROJECT DATA TABLE**

	<b><u>EXISTING</u></b>	<b><u>PROPOSED</u></b>	<b><u>REQUIRED/ PERMITTED</u></b>
<b>General Plan</b>	RLO	same	RLO
<b>Zoning District</b>	RO	same	RO
<b>Lot Size (sf)</b>	6,360 sf	same	6,000 sf min.
<b>Gross Floor Area (sf)</b>	3,072 sf	same	None
<b>Lot Coverage (%)</b>	26%	same	40% max.
<b>Floor Area Ratio (FAR)</b>	48%	same	45%
<b>Setbacks</b>			
• <b>Front</b>	25' 6"	same	2' min.
• <b>Left Side</b>	7' 10"	same	One 4' side yard required
• <b>Right Side</b>	5' 1"	same	12' total
• <b>Rear</b>	30'	same	20'
<b>Parking</b>			
• <b>Total No. of Spaces</b>	1	2	4 min.
• <b>No. of Covered Spaces</b>	1	2	2 min.

**ANALYSIS****Background**

**Previous Actions on the Site:** There are no previously related planning applications at this site.

**Description of Proposed Project**

The applicant is proposing to legalize two gazebo structures in the front and rear yards, one shed in the side yard, five fences of varying heights surrounding the property, and one trellis feature in the rear yard.

**Environmental Review**

A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions, as amended, in accordance with Resolution #193-86. Class 3 Categorical Exemptions exempts accessory structures.

**Use Permit**

**Use:** All accessory structures and fences were constructed without planning and building permits at various times over the past ten years. The applicant is now proposing to legalize these structures to Sunnyvale Municipal Code (SMC) requirements through a Use Permit.

**Site Layout:** The following are descriptions of the assorted structures at the subject property:

**Fences**

- **Front Yard Fence #1:** This four-foot high, wrought iron fence is the lower of the two fences in the front-yard and is adjacent to the public sidewalk. Staff is recommending approval of this fence since the architecture and design are compatible with the property and the surrounding neighborhood. A portion of the fence is sited inside the public Right-of-Way and within the 10' driveway vision triangle area. SMC states the fences may be built to the existing sidewalk only in cases where the sidewalk is not monolithic. In this case, the sidewalk is monolithic, therefore, the fence can only be built as close as the property line. A Condition of Approval (#6) has been added that requires that portion of the fence to be adjusted to meet SMC.
- **Front Yard Fence #2:** This four-foot high, wrought iron fence is located at the raised grade area within the required front yard. SMC requires front-yard fences to have heights measured from the top of curb (TOC), making this fence approximately 12' high from TOC. Staff is also recommending approval of this fence since the architecture and design are compatible with the property and the surrounding neighborhood. In addition, staff believes there would be a safety issue created if the fence were to be removed. This potential unsafe condition is due to the approximate 8' grade difference between the sidewalk and the raised front-yard area.
- **Side Yard Fence Cover:** This small, solid-roofed feature covers the front gate entrance leading to the side yard area. It is constructed of wood beams and wood shake shingles and has been painted to match the fence. The roof is approximately 7' 10" wide and 10' high. The applicant is proposing to remove this feature completely, thereby bringing the fence in to conformance with SMC. This removal is included in the Conditions of Approval #5.

- Side Yard Fence: This fence is seven-feet high and is located on the western, side property line. The applicant has submitted a fence agreement signed by the adjoining property owner (See Attachment #5). Staff is recommending approval of this fence.
- Rear Yard Fence: This fence is also seven-feet high and is located on the rear property line. The applicant has submitted a fence agreement signed by the adjoining property owner (See Attachment #5). Staff is recommending approval of this fence.

#### Gazebos

- Front Yard Gazebo: This gazebo is approximately 8' 8" high and is less than 120 sf. It is located within the required front yard area, where the grade has been raised approximately 10' from TOC. The gazebo is constructed of white wood beams and wood shake shingles and painted to match the residence. Staff is recommending approval of this gazebo since the architecture and design are compatible with the surrounding neighborhood. In addition, staff found that the gazebo contributes to the visual interest of the home as viewed from street.
- Rear Yard Gazebo: This gazebo is approximately 8' 8" high and is less than 120 sf. It is located 12' from the rear property line and 0' from the eastern side property line. The structure is constructed of wood beams and a composite shingle roof. The applicant has agreed to move the gazebo to at least 4' from the side property line, or reduce its height to be less than 6' 6", in order to comply with SMC requirements for accessory structures. Staff is recommending approval of this proposed alteration and has added this as a Condition of Approval #7.

#### Shed

- Side Yard Shed: The shed in the side yard is approximately 30 sf and 7' 6" high and is located 0' from the property line. The applicant is proposing to lower the height of the roof to make the shed less than 6' 6" high. This will bring the shed into compliance with SMC and will allow the shed to remain at 0' from the property line.

#### Japanese Shinto Gate

- This unique architectural feature is a wooden overhead structure, approximately 10' high, intended to be a Japanese Shinto Gate. It is located 0' from the side property line and over 10' from the rear property line. It is comprised of two wooden vertical support beams and two overhead, horizontal spanning wooden arches. This structure is basically a two dimensional feature that functions similar to a gate between the side and rear yard areas.

Staff and the applicant could not reach an agreement on how this type of structure is classified by SMC. Staff believes it should be considered an accessory building since its height exceeds 6' 6", and therefore, should be required to be set back at least 4' from the side property line. The applicant believes it should be considered a gate, since it functions more like a gate than an accessory building. The applicant stated that it also appears more similar to a 10' gate or fence than a 10' high building.

Staff conceded that the Shinto Gate does function and appear most similar to a high gate or fence than an accessory building, but could not definitively conclude the feature was not an accessory building. This conclusion is partially based on the classification of similar architectural features in past applications.

Staff and the applicant did agree to defer to the Administrative Hearing Officer's interpretation of the structure. If the Hearing Officer agrees that it is a gate or fence, the Shinto Gate may be approved as it currently exists, with no modifications necessary. If the Hearing Officer determines the feature is an accessory building, then the structure shall be moved to be at least 4' from the side property line. Condition of Approval #9 has been added to reflect this requirement.

The following Guidelines were considered in analysis of the project site design:

<b>Design Policy or Guideline (Site Layout)</b>	<b>Comments</b>
<b>City-wide Design Guidelines Accessory Utility Buildings D1:</b> <i>Accessory buildings must comply with the requirements of Section 19.40 of the Sunnyvale Municipal Code.</i>	All Accessory buildings comply with SMC.

**Architecture:** Staff has determined that the architecture and design of the fences and accessory buildings are compatible with the surrounding neighborhood and enhance the visual appeal of the subject property.

The following Guidelines were considered in the analysis of the project architecture:

<b>Design Policy or Guideline (Architecture)</b>	<b>Comments</b>
<b>Sunnyvale Single Family Home Design Techniques 3.10 Accessory Structures B:</b> <i>Accessory structures should use the same wall, roof and trim materials as the main structure.</i>	The proposed structure matches the style or colors of the existing residence.

**Landscaping:** The proposed project meets the current SMC requirements for 20% landscaping of the site.

**Parking/Circulation:** This project meets the SMC parking requirements for two enclosed and two unenclosed parking spaces.

### **Transportation Impact Fee**

This project is not subject to fees.

### **Compliance with Development Standards**

The proposed project complies with current development standards. No further improvements are required at this time.

### **Expected Impact on the Surroundings**

No significant impacts to the surrounding properties are expected as a result of this project. The fences and accessory structures have all been in existence for at least several years.

### **Findings, General Plan Goals and Conditions of Approval**

Staff was able to make the required Findings based on the justifications for the Use Permit.

- Findings and General Plan Goals are located in Attachment 1.
- Conditions of Approval are located in Attachment 2.

### **Fiscal Impact**

No fiscal impacts are expected.

**Public Contact**

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<b>Notice of Public Hearing</b>	<b>Staff Report</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>• Published in the <i>Sun</i> newspaper</li><li>• Posted on the site</li><li>• <u>14</u> notices were mailed to the adjacent property owners of the project site</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City of Sunnyvale's Website</li><li>• Provided at the Reference Section of the City of Sunnyvale's Public Library</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City's official notice bulletin board</li><li>• City of Sunnyvale's Website</li><li>• Recorded for SunDial</li></ul>

**Alternatives**

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1. Approve the Use Permit with Conditions as recommended by staff.
2. Approve the Use Permit with modifications.
3. Deny the Use Permit.

**Recommendation**

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Alternative 1.

Prepared by:

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Steve Lynch  
Project Planner

Reviewed by:

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Diana O'Dell  
Senior Planner

Attachments:

1. Findings
2. Conditions of Approval
3. Letter of Justification from Applicant
4. Letters of Support from Neighbors
5. Fence Agreements
6. Site and Architecture Plans



**Recommended Findings - Use Permit**

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1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale.

Land Use and Transportation Element

**Policy N1.1:** Protect the integrity of the City's neighborhoods; whether residential, industrial or commercial.

**Action Statement N1.1.1**

Limit the intrusion of incompatible uses and inappropriate development into city neighborhoods.

The project will not negatively impact the adjacent properties. Similar structures and fences are located in the surrounding neighborhood

2. The proposed use is desirable, and will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the Zoning District.

The structures are positive architectural feature that enhances the existing environment of the property and will not detract from the public welfare or interests of the surrounding property owners.

**Recommended Conditions of Approval – Use Permit**

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In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions, the Permittee expressly accepts and agrees to comply with the following Conditions of Approval for this Permit.

1. Obtain Building Permits for the following:
  - a) All fences
  - b) All gazebos
  - c) All other structures on site which have not previously been permitted.
2. The conditions of approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
3. This Use Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
4. The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.

**Fences**

5. The solid-roofed feature covering the front gate entrance to the side yard, on the western property line, shall be removed entirely.
6. The portion of the front wrought iron fence that is within the public Right-of-Way, and which is within the 10' driveway vision triangle area, shall be set back to the front property line and lowered to be 3' high maximum for any portion within the vision triangle.

**Gazebos**

7. The gazebo in the rear yard area shall be moved to be at least 4' from the side property line and 10' from the rear property line, or reduced in height to be less than 6' 6", in order to comply with SMC requirements for accessory structures.

**Sheds**

8. Reduce the shed in the side yard area to be less than 6' 6" in height and less than 120 square feet in area.

**Other Features**

9. If the Hearing Officer determines the Japanese Shinto Gate feature in the rear yard is an accessory building, then it shall be moved to be at least 4' from the side property line and at least 10' from the rear property line.

Justification For Use Permit.  
For: FRONT YARD GAZEBO, SIDE YARD GATE & FRONT YARD FENCES  
767 Chopin Drive, Sunnyvale CA 94087  
9 June 2004

This use permit covers a front gazebo, a side gate to the property and two front yard wrought iron fences. The front yard gazebo and side yard gate have been in existence since approximately 1987.

**FRONT YARD GAZEBO**

A gazebo is planned that will complement the home's Oriental motif and garden. It is basically a "lawn decoration". Just as three different sized rocks (small, medium and large) are often arranged in an Oriental garden, the gazebo adds this effect to the home, although it is not attached to it. From the front, and looking left to right, one observes the medium high level roofline, then the small gazebo and finally the highest-level roofline. Consequently, this gives the home a "balanced" appearance, complementing the house as noted by several neighbors in their letters of support. The Koi pond and the bridged stream running into it, in further accent the Oriental flavor found in our ethnically diverse California neighborhoods. Another function of the gazebo is to obscure a natural biodegradable filter pond needed to maintain the Koi pond's water clarity.

**SIDE YARD GATE**

A side yard gate is the front extension of the side yard fence. It is composed of two 7' 6" high doors contained in a 3' 9" wide opening and mounted with wooden hinges of an Oriental style. The decorative roof structure is just that, a decoration – not a functional roof. Its function is to "frame" the 8' 6" Shinto gate at rear of the house leading into the Oriental garden found in the rear yard. The "framed Shinto gate and complementing shrubbery is designed to draw the visitor's eye from the unsightly garbage cans and storage sheds found at the side of the house. If the roof structure requires a variance, it is proposed that only a roof frame would remain with the ability to grow vines over the five transverse framing structures.

**FRONT YARD FENCES**

The attached application is for a nominal 5' high wrought iron safety fence to restrict access to a Koi pond and attendant stream in the front yard of the property found at 767 Chopin Drive. It also encloses a small deck (less than 18" from the ground) found near parts of the Koi pond so individuals can maneuver around the Koi pond and will not inadvertently step off a nearby embankment where shrubbery is located. This same shrubbery blocks most of the view of the fence making it appear as if it were only three feet tall. In addition, there are two gates and a few 3' high fence sections that are needed to aid elderly residents in navigating the stairs approaching the dwelling. This fence is similar to other neighborhood ones found at 1096 and 12-2 Rembrandt.

A second 3' fence is located within the 11' easement and along the front of the property along the sidewalk. It is likewise to aid the elderly resident while embarking and disembarking transportation parked along Chopin Drive.

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

This is to inform the Sunnyvale Planning Commission that we, the undersigned neighbors, have no objection to the Roofed Gate and Gazebos in the front and rear yards of the property at 767 Chopin Drive, Sunnyvale CA

If initialed, this means that we consider these structures to be an asset to our neighborhood. BZ

Additional Comments:

Neighbor Barbara Johnson Date 5-31-04

Neighbor's Address: 774 Chopin DR.

Sunnyvale, CA

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
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Additional Comments:

Neighbor Takatoshi Ishii Date June 1 '2004

Neighbor's Address: 751 chopin Drive

Sunnyvale, CA 94087-2812

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
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If initialed, this means that we consider these structures to be an asset to our neighborhood. NO

Additional Comments: NO

This structure has been present for the 11 years since we have been residents! We don't consider it a problem. It matches the existing home in design and color!

Neighbor James Voreyer Date 5/31/04

Neighbor's Address: 770 Chopin Dr

Sunnyvale, CA

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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If initialed, this means that we consider these structures to be an asset to our neighborhood. *[Signature]*

Additional Comments:

*The Gazebos compliment the structure of the house, especially the front.*

Neighbor *[Signature]* Date 06-07-04

Neighbor's Address: 766 Chopin Dr.

Sunnyvale, CA 94087

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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Additional Comments:

Since we are the next door neighbor and have been here for eight years, we feel that the Gazebos is a landmark on Chopin Drive! We have no problem with that at all!

Neighbor *[Signature]* Date 5/31/2004

Neighbor's Address: 763 Chopin Dr.

Sunnyvale, CA



To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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If initialed, this means that we consider these structures to be an asset to our neighborhood. R.P.  
J.P.

Additional Comments:

Been there for years. A part of the neighborhood since 1989.

R.P.  
Neighbor REIDAR PETERSEN Date 5.31.0004  
John Petersen J.P.  
Neighbor's Address: 762 Chopin Dr.  
Phone 245 1440 (408)

Sunnyvale, CA

ATTACHMENT 4

Page 7 of 12

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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If initialed, this means that we consider these structures to be an asset to our neighborhood. \_\_\_\_\_

Additional Comments:

Neighbor Margaret Knopf Date June 1, 2004

Neighbor's Address: 759 Chopin Drive

Sunnyvale, CA

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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If initialed, this means that we consider these structures to be an asset to our neighborhood. MS

Additional Comments:

Neighbor Mary Simpson Date 5/31/04

Neighbor's Address: 758 Chopin Drive

Sunnyvale, CA

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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~~If initialed, this means that we consider these structures to be an asset to our neighborhood.~~

Additional Comments:

Neighbor Hai Truong Date June 3, 2004

Neighbor's Address: 755 CHOPIN Dr. Sunnyvale CA 94087

Sunnyvale, CA

ATTACHMENT 4

Page 10 of 12

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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If initialed, this means that we consider these structures to be an asset to our neighborhood. RS

Additional Comments:

Neighbor Raymond H. Strong Date 6/1/04

Neighbor's Address: Raymond H. Strong  
779 Chopin Drive  
Sunnyvale, CA 94087-2812

Sunnyvale, CA

ATTACHMENT 4

Page 11 of 12

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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If initialed, this means that we consider these structures to be an asset to our neighborhood. VLP

Additional Comments:

*The structures look great!*

Neighbor Vincent L. Road Date 06/01/04

Neighbor's Address: 775 Chopin Drive

Sunnyvale, CA

To: Sunnyvale Planning Commission  
From: Neighbors of 767 Chopin Drive, Sunnyvale CA  
Subject: Roofed Gate and Gazebos at 767 Chopin Drive, Sunnyvale CA

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If initialed, this means that we consider these structures to be an asset to our neighborhood.   &  

Additional Comments:



CHUCK FALORE

CHRYSLER - PLYMOUTH - JEEP  
776 F. EL CAMINO REAL, SUNNYVALE, CA 94087  
TEL.: (408) 732-7800 FAX: (408) 730-0731  
EMAIL: efalore@falore.com

Neighbor                      Date 6/2/04

Neighbor's Address: 776 E. EL CAMINO REAL S.V. CA 94028

Sunnyvale, CA



City of Sunnyvale  
Community Development Department  
(408) 730-7444

ATTACHMENT 5  
Page 1 of 2

## FENCE AGREEMENT

6/24/04

(DATE)

I am an adjoining property owner of BARRY WARM KESSEL  
(NAME)

whose property is located at 767 CHOPIN DRIVE, SUNNYVALE CA  
(ADDRESS)

I have reviewed the proposal for a ~ 7 foot high fence facing my  
property. That already exists  
(7 FT. MAX.)

and am in agreement with the attached plans as per SMC 19.48.020.

SIGNED: NAME: CHUCK FALWE  
SIGNATURE: [Signature]  
ADDRESS: 770 E EL CANISO REAL  
DAY PHONE: 908 921 9902

Clear

for staff use only:

File No.: \_\_\_\_\_

Approved: \_\_\_\_\_

Planner: \_\_\_\_\_





## FENCE AGREEMENT

June 28, 2004

(DATE)

I am an adjoining property owner of BARRY WARMKESSER

(NAME)

whose property is located at 767 Chopin Drive, Sunnyvale, CA 94087

(ADDRESS)

I have reviewed the proposal for a 6' 6" foot high fence facing my property,

(7 FT. MAX.)

and am in agreement with the attached plans as per SMC 19.48.020.

SIGNED: NAME: JUNWAI FANG

SIGNATURE: [Signature]

ADDRESS: 763 Chopin Dr. Sunnyvale, CA 94088

DAY PHONE: (408) 774-1378

*side*

for staff use only:

File No.: \_\_\_\_\_

Approved: \_\_\_\_\_

Planner: \_\_\_\_\_

